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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1218

ROBERT LIEBERMAN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JACK KRANIS,
Counsel for Petitioner.

A. HARRY WEISSMAN,
Of Counsel

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I

Summary Statement of the Matter Involved

The Information was filed on August 31st, 1944 in the District Court for the Eastern District of New York against Robert Lieberman and James Nolan, defendants therein. They charged the defendants for selling a commodity, to wit, chucks, ribs and hinds of beef in violation of a price

schedule effective in accordance with the provisions of Section 2(a) of the Emergency Price Control Act of 1942. Defendant was arraigned on September 11, 1944, and admitted to bail in the sum of $1,000.00. No trial was had. The defendant Robert Lieberman entered a plea of guilty to Counts #2 and #3 of the Information on May 23rd, 1945, and on May 26th, 1945, moved in arrest of judgment, which was denied on May 31st, 1945. Sentence was imposed by Hon. Grover M. Moscowitz, United States District Judge, on June 5th, 1945, sentencing the defendant, Robert Lieberman, to serve sixty (60) days imprisonment and a Twenty-Five Hundred ($2,500.00) Dollar fine on Count #2 and on Count #3 to serve six (6) months imprisonment, which was suspended and he was placed on probation for eighteen months. At that time a motion was made to vacate the sentence and set aside the judgment, which was denied. The remaining counts were dismissed on the motion of the Government. A Nolle Prosequi was entered by the Government as to the defendant James Nolan. A Notice of appeal was filed by the defendant, Robert Lieberman, June 8, 1945, and bail was fixed in the sum of $1,000.00 and he was released pending appeal on such bail and in addition a bond was posted in the sum of $2,500 for the payment of the fine on Count #2.

The petitioner herein appealed from the judgment to the Circuit Court of Appeals for the Second Circuit, which affirmed with an opinion (See Appendix—"A").

Questions Presented

1. Do the facts as set forth in Counts 2 and 3 of the Information constitute or allege an offense against the United States in that (a) Maximum Price Regulation No. 169 was a price regulation relating to a commodity which was and is an agricultural product, to wit: Beef or dressed Beef?

2. Was Maximum Price Regulation No. 169 rescinded and rendered ineffectual and inoperative on or about January 10th, 1945, by directive #28 issued that day by Director of Office of Economic Stabilization?

3. Was the said Maximum Price Regulation rescinded and rendered ineffectual and inoperative by Maximum Price Regulation No. 574 promulgated by the Office of Price Administration? - - -

4. Was the Maximum Price Regulation No. 169 invalid on its face in that it failed to set forth or transcribe the method and manner of stating a dollar and cents price control of the commodity mentioned by the Office of Price Administration?

5. Has the Emergency Court of Appeals since the rescission of the Maximum Price Regulation No. 169 on or about January 10th, 1945, repeatedly and continually failed and refused to pass upon the validity of the Maximum Price Regulation No. 169?

6. Has the Administrator of the Office of Price Administration in promulgating Maximum Price Regulation No. 169 failed to comply with the Emergency Price Control Act of 1942 as amended June 30th, 1944?

7. Is Maximum Price Regulation No. 169 indefinite, uncertain, arbitrary, discriminatory and unconstitutional in depriving the defendant of his property without due compensation and in violation of article 5 and article 14 of the Amendments to the Constitution of the United States?

Reasons Relied Upon For Allowance of Writ

1. The great importance of the Emergency Price Control Act of 1942 and the effect of the Stabilization Act of 1942, amendatory thereof, to the United States, to the business

world and legal profession, and the need of an authoritative opinion, particularly as to the conflicting penal provisions of these Acts, calls for a construction of the Act by this Court.

2. The decision of the Circuit Court of Appeals herein, holding that it was unnecessary for the Price Administrator to obtain prior approval of Maximum Price Regulation No. 169 before taking any action with respect thereto is contrary to the language expressed in section 3(a) of the Emergency Price Control Act of 1942, as amended June 30th, 1944, and is contrary to the manifest intentions of the Legislature.

3. The decision of the Circuit Court of Appeals held that the 1944 amendment of the aforementioned Emergency Price Control Act (50 U. S. C. A. Appendix—Section 924 e) sets up a procedure to meet all questions raised in the proceeding herein. However, the Emergency Court of Appeals mentioned that the foregoing statute has repeatedly and continually refused to pass upon the validity of Maximum Price Regulation No. 169. The said Emergency Court of Appeals has repeatedly held that they would not so pass upon any protest filed against the said Maximum Price Regulation No. 169 because, as it is claimed by the said Emergency Court of Appeals, the situation or complaints set forth in the Protests filed against Maximum Price Regulation No. 169 has been cured by Maximum Price Regulation No. 574, it is therefore submitted that the Emergency Court of Appeals has divested itself of the exclusive jurisdiction to determine the validity of Maximum Price Regulation No. 169. Therefore the questions presented herein are properly before this Court.

WHEREFORE your petitioner prays that a Writ of Certiorari issue under the seal of this Court directed to the Circuit

Court of Appeals for the Second Circuit, forthwith to certify and send to this Court a full and complete transcript of the records and proceedings of said Court had in the cause numbered and entitled on its docket "No. 40111 of the August Term, 1944 United States of America, Plaintiff-Appellee against Robert Lieberman, Defendant-Appellant and James Nolan, Defendant" to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, that the judgment herein of said Circuit Court of Appeals be reversed by this Court, and for such other and further relief as to this Court may seem just and proper.

Dated: May 10th, 1946.

JACK KRANIS,
Counsel for Petitioner.

A. HARRY WEISSMAN,
Of Counsel.